

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES ALLEN KAPPLER, JR.,

Defendant.

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Case No. 8:14CR103

ORDER

This case is before the court on the defendant James Allen Kappler Jr.'s Motion for Issuance of Subpoenas to Produce Documents Before Trial (#87). The defendant moves the court for the issuance subpoenas to records custodians of WMS Gaming, Inc., Harrah's Enterprises, LLC, and Prairie Band Casino & Resort. The motion is denied.

A review of the Affidavit in Support of Motion for Issuance of a Subpoena to Produce Documents Before Trial (#88) shows that the motion contains only the conclusionary language set out in NECrimR 17.2(b) as follows:

The undersigned cannot properly prepare for the trial or other evidentiary proceeding without advance production and inspection of the documents, the failure to obtain advance production and inspection of the documents may unreasonably delay the proceeding, and the application is made in good faith and not intended for the purpose of general discovery.

The problem with the defendant's motion and affidavit (#88) is that NECrimR 17.2(b)(2) requires the magistrate judge make a preliminary determination of whether the material sought is probably relevant and probably admissible. It also requires that the magistrate judge determine if the request is specific enough to be intelligently evaluated. The defendant's pleadings set out no factual allegations as to why the records

are needed or what, if any, connection those records might have with the defendant's wire fraud charges or defenses to those charges.

IT IS ORDERED: Defendant James Allen Kappler, Jr.'s Motion for Issuance of Subpoenas to Produce Documents Before Trial (#87) is denied.

Dated this 29th day of December 2015.

BY THE COURT:

s/ F.A. Gossett, III
United States Magistrate Judge